

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DWAYNE BACON,

Plaintiff,

-v-

9:15-CV-1502
(DNH/CFH)

MR. PHELPS, formerly known as Phillips; and
MR. P. SHIPMAN, S.I.S. Lieutenant, FCI Ray
Brook,

Defendants.

APPEARANCES:

DWAYNE BACON
Plaintiff pro se
44513-007
McKean Federal Correctional Institution
Inmate Mail/Parcels
P.O. Box 8000
Bradford, PA 16701

HON. RICHARD S. HARTUNIAN
United States Attorney for the
Northern District of New York
P.O. Box 7198
100 South Clinton Street
Syracuse, NY 13261

CHARLES E. ROBERTS, ESQ.
Ass't United States Attorney

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Dwayne Bacon brought this civil rights action against the above named federal defendants pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau

of Narcotics, 403 U.S. 388 (1971). On July 6, 2017, the Honorable Christian F. Hummel, United States Magistrate Judge, advised by Report-Recommendation that defendant Shipman's unopposed motion to dismiss be granted and that the second amended complaint be dismissed in its entirety as against him. Plaintiff filed timely objections to the Report-Recommendation.¹

Based upon a de novo review of the portions of the Report-Recommendation to which plaintiff objected, the Report-Recommendation is accepted and adopted in all respects. See 28 U.S.C. § 636(b)(1).

Therefore, it is

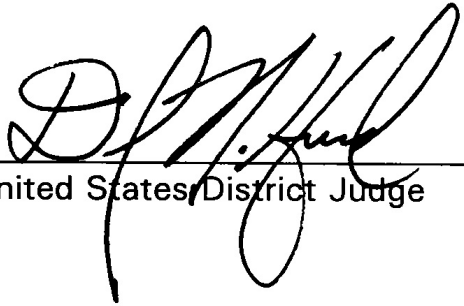
ORDERED that

1. The second amended complaint is DISMISSED in its entirety as against defendant Mr. P. Shipman, S.I.S. Lieutenant, FCI Ray Brook; and

2. Remaining defendant Phelps is directed to contact Magistrate Judge Hummel's Chambers, if he has not already, to set a briefing schedule regarding the filing of any dispositive motions on his behalf.

IT IS SO ORDERED.

¹ It is also noted that since the filing of the Report-Recommendation, the United States Attorney's Office has advised that it represents defendant Phelps and that he consents to a waiver of service. That office advised that it would be filing a motion to dismiss on behalf of Phelps which would be "largely identical" to that filed by defendant Shipman and that the motion would likely be unopposed by plaintiff. In light of that, defense counsel requested plaintiff advise if he consents to dismissal of the action as against defendant Phelps. Plaintiff has indicated that he does not consent to such dismissal. Accordingly, the action will proceed against defendant Phelps.



United States District Judge

Dated: September 21, 2017
Utica, New York.